



Arizona State Senate *Issue Brief*

September 22, 2006

Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

DETERMINATION OF LEGAL STATUS BY EMPLOYERS

INTRODUCTION

The Federal Immigration Reform and Control Act (FIRCA) makes all U.S. employers responsible for verifying the identity and work authorization of all individuals, including U.S. citizens, hired after November 6, 1986. To implement this law, employers are required to complete Employment Eligibility Verification forms (I-9 Form) for each employee when hired.

I-9 Forms are divided into two sections. The first section must be filled out and signed by the employee. For the second section, the employer is required to personally review the original document(s) provided by the employee from a list of acceptable documents, establishing the employee's identity and eligibility to work. The employer must accept documents that reasonably appear on their face to be genuine and to relate to the person presenting them. The employer must reject documents that do not reasonably appear to be genuine and ask the employee for another form of documentation from the list. The employer is then required to complete the second section, attesting to the document(s) presented. When an employer signs the I-9 Form, the employer is attesting to the fact that the employer has reviewed the original document and that it reasonably appears to him or her, upon reasonable inspection of its features and the information it contains, to be genuine and relates to the employee who has presented it for employment eligibility verification purposes. Signage by the employer does not attest to the legitimacy of the status of the person presenting the documents. Employers are prohibited from requesting that an employee present more or different documents than required and cannot specify which document(s) to present.

I-9 Forms must be retained for three years after the date the person begins work or one year after the person's employment is terminated, whichever is later. Employers are required to make the I-9 Form available for inspection to an officer of the Bureau of Immigration and Customs Enforcement, the Department of Labor and/or the Justice Department's Office of Special Counsel for Unfair Immigration-Related Employment Practices.

FIRCA prescribes penalties for employers that are found to have knowingly hired or knowingly continued to employ an illegal immigrant or have failed to comply with employment eligibility verification requirements. Penalties include monetary fines and imprisonment, depending on the severity of the offense.

I-9 Forms are unnecessary for the following: employees hired before November 6, 1986, and continuously employed by the same employer; individuals performing casual employment who provide domestic service in a private home that is sporadic, irregular or intermittent; independent contractors; and workers provided to employers by individuals or entities providing contract services, such as temporary agencies (the contracting party is the employer for I-9 purposes in this case).

BASIC PILOT PROGRAM

The U.S. Citizenship and Immigration Services office administers the Systematic Alien Verification for Entitlements (SAVE) Program. The SAVE Program, together with the Social Security Administration, administers the Basic Pilot Employment Verification Program (Basic Pilot Program), which allows employers to confirm the employment eligibility of all newly hired employees. The Basic Pilot Program involves verification checks of Social Security Administration and Department of Homeland Security databases by using an automated system to verify employment authorization. The system uses Social Security numbers, alien registration numbers and I-94 numbers (arrival/departure numbers) to perform the verification checks. Employers can participate in the program through the Internet by registering and completing a Memorandum of Understanding. The Basic Pilot Program is scheduled to end in November 2008.

ADDITIONAL RESOURCES

- “Handbook for Employers: Instructions for Completing Form I-9”(M-274), provided by the U.S. Department of Justice
http://uscis.gov/graphics/lawsregs/handbook/hand_emp.pdf
- Office of Business Liaison
6th Floor
111 Massachusetts Avenue, NW
Washington, DC 20539
Toll-free line: 1-800-357-2099
TDD: 1-800-767-1833
<http://uscis.gov/graphics/services/employerinfo/oblhome.htm>
- U.S. Citizenship and Immigrations Services’ Frequently Asked Questions About Employment Eligibility
<http://uscis.gov/graphics/howdoi/EEV.htm>
- Basic Pilot Employment Verification Program
U.S. Citizenship and Immigration Services’ SAVE Program Information Page
<http://uscis.gov/graphics/services/SAVE.htm>
To Register:
<https://www.vis-dhs.com/EmployerRegistration/>
- U.S. Department of Labor’s Employment Law Guide
<http://www.dol.gov/asp/programs/guide.htm>